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IN THE  
SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1944

No. 957

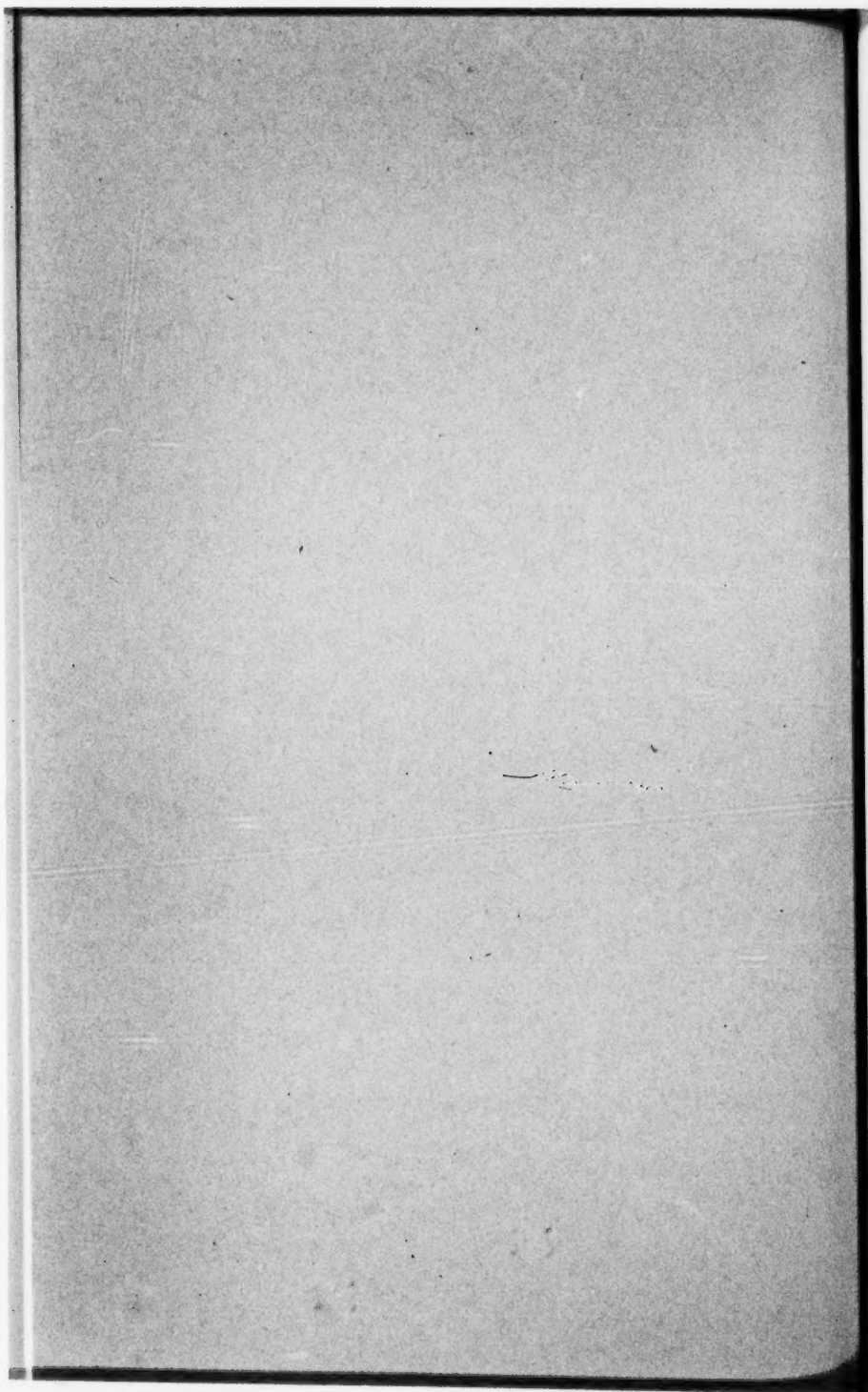
J. M. PROCTOR, JR., AND ALMOND JAMES JONES,  
*Petitioners,*

v.

UNITED STATES OF AMERICA,  
*Respondent*

PETITION FOR WRIT OF CERTIORARI  
To the United States Circuit Court of Appeals  
for the Fifth Circuit, and Brief in Support  
Thereof

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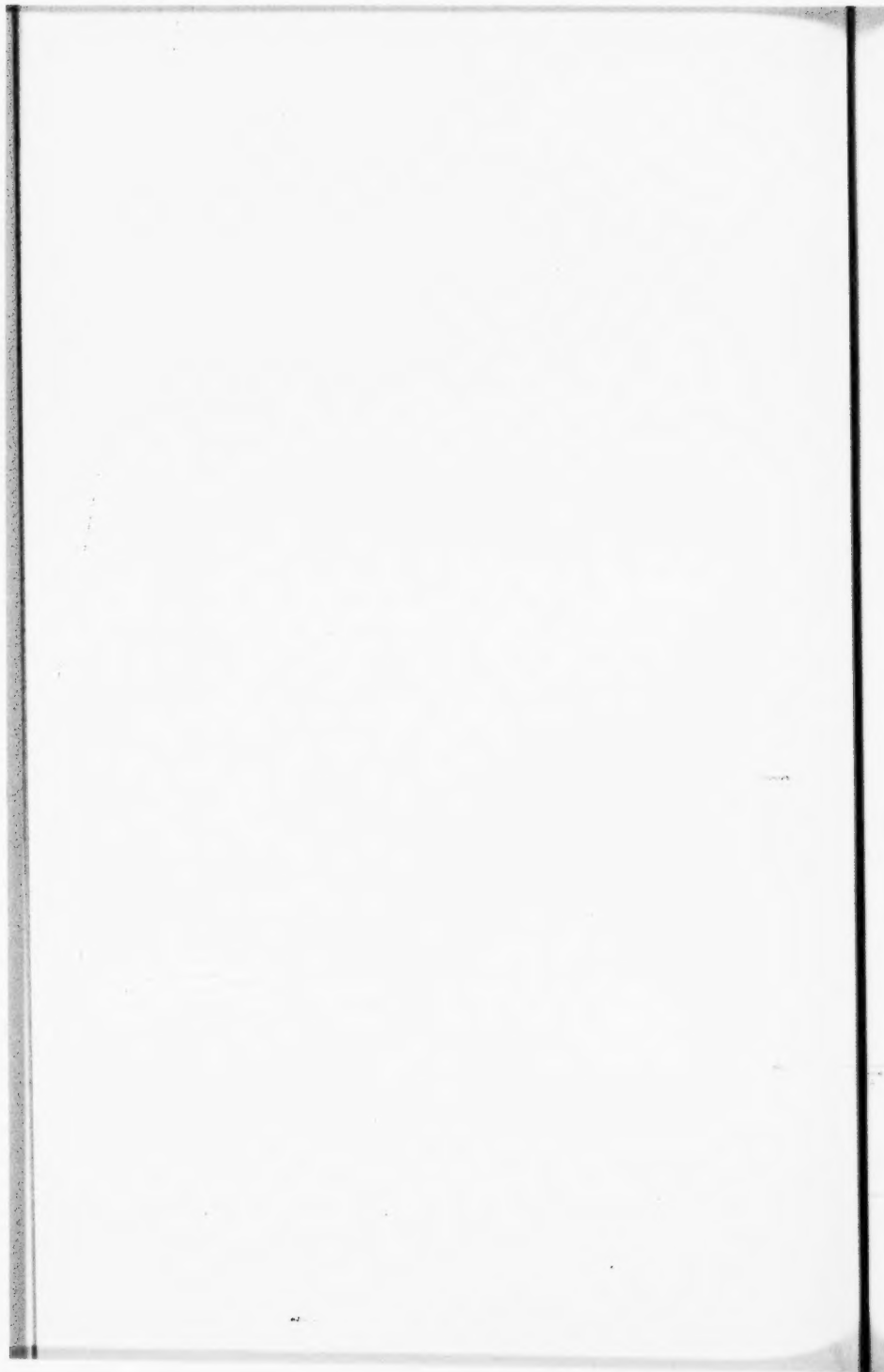
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SUPREME COURT OF THE  
UNITED STATES  
OCTOBER TERM, 1944

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No. \_\_\_\_\_

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J. M. PROCTOR, JR., AND ALMOND JAMES JONES,  
*Petitioners,*

v.

UNITED STATES OF AMERICA,  
*Respondent*

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**PETITION FOR WRIT OF CERTIORARI**  
**To the United States Circuit Court of Appeals**  
**for the Fifth Circuit**

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*To the Honorable Chief Justice of the United States and the  
Associate Justices of the Supreme Court of the United  
States:*

Petitioners, J. M. Proctor, Jr. (age 25), and Almond James Jones (age 22), and each of them, respectfully pray for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, to review a Judgment of that Court entered on December 15th, 1944, convicting Petitioners, and each of them, of a violation of Sec. 88, Title 18, U. S. C. A. (conspiracy), and of a violation of Sec. 398, Title 18, U. S. C. A. (Mann Act violation);

A Petition for Rehearing was denied on January 3<sup>rd</sup>, 1945.

### Statement

These Petitioners were indicted in the District Court, Southern District of Texas (Houston Division), each being charged on Three Counts (R. 3-8).

(1) *Conspiring* to transport or causing to be transported, in interstate commerce, two females from Houston, Texas, to New Orleans, Louisiana.

(2-3) A violation of Section 2 of the Mann Act in that Appellants transported and caused to be transported, and aided and assisted in obtaining transportation for and in transporting, two girls in interstate commerce, from Houston, Texas, to New Orleans, Louisiana, for the purpose of prostitution or debauchery, and, with the intent to induce, entice and compel the girls to debauchery and to engage in immoral practice.

Trial was before a Jury, resulting in conviction of Petitioners on the conspiracy counts as well as on the substantive offenses (R. 10). Petitioners, before submission of the case to the jury, timely requested the Court to instruct the jury on the law of circumstantial evidence, which was refused (R. 116-117). Petitioners' Motion for a new trial (R. 15-17) was overruled (R. 18).

Petitioners contend that they may not be convicted of a "conspiracy" to commit a crime and likewise be convicted of having committed the crime itself. Since the crime with which Petitioners stand charged necessarily involves mutual coöperation of two persons, and having been convicted of both "conspiracy," and of the crime itself, this contention presents important and substantial questions of law.



Petitioners' contention that there was no relevant proof that a conspiracy ever existed, or that the dominating purpose of the trip was such as to come within the purview of the Mann Act Statute, necessitates a brief analysis of the evidence. As to this, the Circuit Court of Appeals simply stated that the jury was warranted in finding Petitioners guilty both on the "conspiracy" counts and of the substantive offenses.

Just one witness was offered to establish conspiracy. Government witness Anderson stated that she went to New Orleans, Louisiana, with Petitioners, and *Harry McCutcheon* (who was not indicted), because she had been asked by these Petitioners to go (R. 64). She does not state why she went, except that she wanted to go. There is no showing of a sinister motive on the part of Petitioners, or either of them, in their asking her to go.

Petitioners contended that there was no relevant proof from which the jury could rightly find or infer, beyond a reasonable doubt, that Petitioners transported the young ladies from Houston, Texas, to New Orleans, Louisiana, for a purpose condemned by the Mann Act. In this respect, the undisputed evidence shows that Petitioner Proctor made the trip solely in the interest of his employer (R. 87-88), and that Petitioner Jones had for his sole purpose in making this trip, the securing of a position with a Radio Station in New Orleans, Louisiana (R. 30-34).

Petitioners' contention, that matters were improperly submitted to the jury likewise presents important and substantial questions of law. Petitioners asserted that the indisputable evidence as to Petitioners' sole purpose in making the trip (R. 67; 30-34) was completely destroyed and robbed of its effect by the Trial Judge in admonishing the jury that it could determine "WHO TOLD THE TRUTH, WHETHER THEY TOLD THE TRUTH COMPLETELY OR

WHETHER THEY TOLD HALF THE TRUTH, WHETHER PART OF THE TESTIMONY IS TO BE BELIEVED, WHETHER ANY PART OF IT IS TO BE BELIEVED, OR WHETHER THE TESTIMONY IN TOTO IS TO BE BELIEVED" (R. 114). In other words, this instruction placed upon Petitioners a burden which the law does not impose. It necessarily shifted the burden of proof and, in effect, tells the jury that it may ignore entirely the testimony of Petitioner Proctor, but may believe the entire testimony of Government witness Anderson.

The Circuit Court of Appeals affirmed the cause without expressly passing on this question.

### **Jurisdiction**

The judgment of the Circuit Court of Appeals was entered on December 15th, 1944 (R. 123).

A petition for rehearing was denied on January 13th, 1945 (R. 138).

The jurisdiction of this Court rests upon Section 240 (A) of the JUDICIAL CODE, as amended by the Act of February 13th, 1925, Title 28, Section 347 (A), U. S. CODE.

### **Opinion of the Court Below**

The opinion of the Circuit Court of Appeals has not been officially reported. It appears at pages 123-125 of the Record. It is attached to this Brief as an exhibit.

### **Questions Presented**

1. One issue in this cause is the question as to whether Petitioners charged with the commission of "conspiracy" as well as of the commission of the substantive offense, may be convicted of a "conspiracy" and at the same time be con-

victed of committing the substantive crime. This question has never heretofore been considered by this Honorable Court, although it has on two occasions (*U. S. v. KATZ*, 271 U.S. 354, 355; *GEBARDI v. U. S.*, 287 U.S. 112), approved the doctrine that a person may *not* be convicted of a "conspiracy" to commit a crime, and also be convicted of the commission of the crime itself.

2. Another issue involved is whether conspiracy may exist, absent legal evidence of an agreement, plan or intention, at the beginning of the journey, to commit acts prescribed by the Mann Act.

3. The next issue is whether a conviction for conspiracy may be had, absent any relevant evidence from which the jury could properly find that Petitioners transported the young ladies from Houston, Texas, to New Orleans, La., for purposes denounced by the Mann Act.

4. The case, as to the substantive charges, presents the question as to whether conviction may be had on evidence which indisputably shows that Petitioners' sole purpose in making the trip was wholly different from that denounced by the Statute, and without any immoral purposes.

### **Reasons Relied Upon for the Allowance of the Writ**

#### **I.**

There is here presented for decision an important question of Federal law, which has not definitely been, (though tacit approval was given in *U. S. v. KATZ*, 271 U.S. 354, 355, and *GEBARDI v. U. S.* 287 U.S. 112) but should be, settled by this Court. Whether Petitioners jointly indicted on conspiracy counts, as well as with commission of the substantive crime, may be convicted on the "conspiracy" counts, and likewise be convicted for committing the substantive of-

fense with which they are charged in the "conspiracy" count as seeking to accomplish, is an important and undetermined question.

## II.

The Circuit Court of Appeals for the Fifth Circuit has decided an important question of law in a way which conflicts with decisions of other circuits, notably those of the Eighth Circuit in *DIETRICH v. U. S.*, 216 F. 664, and *U. S. v. ZEULI* (2d Cir.), 137 F. (2d) 845. In these cases the well established principle was followed that if the commission of a crime necessarily involves mutual coöperation of two persons and they have been convicted for the commission of the crime, they may not be convicted of "conspiracy" to commit the substantive crime. In the case at bar, the Court below refused to apply this principle.

## III.

The Circuit Court of Appeals for the Fifth Circuit has decided an important question of Federal law in a way which conflicts with decisions of this Honorable Court and of other Circuits notably those of this Court, in *GEARDI, ET AL., v. U. S.*, 287 U.S. 112; *MORRISON v. CALIF.*, 291 U.S. 82; *U. S. v. FALCONE*, 311 U.S. 205; *DIRECT SALES CO., INC., v. U.S.*, 319 U.S. 703, and those of the Fifth Circuit in *YOUNG, ET AL., v. U. S.*, 48 F. (2d) 26, and *KASSIN v. U. S.*, 87 F. (2d) 183, and those of the Second Circuit, principally the case of *U. S. v. ANDOLSCHEK, ET AL.*, 142 F. (2d) 503. In these cases the well established rule was followed, that a conviction for "conspiracy" may not be had unless the evidence discloses a corrupt agreement between two or more persons *with guilty knowledge on the part of such persons*, and unless such knowledge is clear. In the case at bar, for the first time, this rule has been avoided in that there was no legal

evidence to sustain the charge of conspiracy, and it is contrary to the holding of the cases cited herein.

#### IV.

The Circuit Court of Appeals for the Fifth Circuit has decided an important question of law in a manner which conflicts with the decision of this Honorable Court, that of *MORTENSEN v. U. S.*, 322 U.S. 369. In the case cited the established rule was followed, that to constitute a violation of the Mann Act, it is necessary that the evidence clearly show that the transportation was the means of facilitating the acts condemned by said Statute, and the intention to employ interstate transportation for the unlawful purpose, existed before the trip was initiated. The Circuit Court in the case at bar impliedly stated its refusal to follow the *MORTENSEN* case, in that the existence of the real intent and purpose when the journey was commenced, was entirely ignored, and another arbitrary and artificial intent was substituted, absent any evidence. The actions and intent of Petitioners, being the dominating factors, were completely ignored.

#### V.

The Circuit Court of Appeals for the Fifth Circuit has decided an important question of Federal law, in a manner which conflicts with decisions of other circuits notably that of the Tenth Circuit in *YODER v. U. S.*, 71 F. (2d) 85, and of the Second Circuit in *U. S. v. KRULEVITCH*, 145 Fed. (2d) 76. In these cases, the well established rule was followed, that instructions to a jury sitting in a criminal case must not contain admonitions to ignore any part of the evidence. In the case at bar, for the first time, a qualification has been written into that rule that the Trial Court may instruct the jury to arbitrarily ignore the testimony of any witness ir-

respective of whether the jury believes such witness has testified falsely.

### Prayer

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and the proceedings of the Circuit Court of Appeals had in the case numbered and entitled on its docket 11004, J. M. Proctor, Jr., and Almond James Jones, Appellants, versus United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such further relief as this Court may deem proper.

J. M. PROCTOR, JR., AND  
ALMOND JAMES JONES,  
Petitioners,

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By BERNARD A. GOLDING,  
*Counsel for Petitioners*

February, 1945.

